A

GALLANT HEIGHTS DEVELOPMENT SDN BHD

v.

ROGER RAZMAN SMITH ABDULLAH & ORS

B

HIGH COURT MALAYA, KUALA LUMPUR
HISHAMUDIN YUNUS J
[CIVIL SUIT NO: S3-24-2147-04]
20 SEPTEMBER 2005

C

CIVIL PROCEDURE: *Summary possession of land - Licence - Apartment - Owner of apartment had been wound-up and put under receivership - Management of apartment taken over by defendants unit-owners - Absence of objection from official receiver - Whether defendants acting with implied consent of official receiver - Whether could not be evicted - Rules of the High Court 1980, O. 89*

D

This was an application by the plaintiff to evict the defendants from the premises of the management office of a certain apartment in Bangsar ('the apartment') pursuant to O. 89 Rules of the High Court 1980 ('RHC'). The plaintiff was the owner of the apartment, while the defendants were the unit owners and residents thereof. On 21 May 1997, the plaintiff was wound-up pursuant to a court order, following which custody and control of the management was vested in the official receiver. The vesting notwithstanding, the official receiver did nothing to oversee the day to day management of the apartment, with the result that the residents were confronted with serious problems relating to garbage disposal, sanitation, payment of utility bills, collection of management fees etc. Upon the obtaining circumstances, the defendants, out of necessity, and in an effort to solve the problems, occupied the management office of the apartment. The official receiver did not object to the defendants' move, but the plaintiff did. Hence, after obtaining a stay order in respect of the winding-up, the plaintiff requested the defendants to hand over the management office to them, and failing that initiated the eviction proceeding herein.

E

F

G

Held (dismissing the application):

H

(1) The defendants were not squatters simpliciter and so O. 89 of the RHC cannot be invoked against them. Properly, the plaintiff should have proceeded by way of a writ action. (para 7)

(2) The move by the defendants ought to be seen in the context of necessity and of the many serious problems faced by the residents during the 'management vacuum'. (para 8)

I

(3) The official receiver, "the plaintiff's predecessor in title" for the purpose of O. 89 r. 1 RHC, did not protest against the defendants' move. That being so, the official receiver must be deemed to have given implied consent to the defendants to take over the management and to occupy the management office. (para 8)

(4) On the facts, the defendants were licensees holding over. They are licensees holding over because during the period when the official receiver had custody and control over the apartment, the defendants had the implied licence to manage the apartment including occupying the management office of the apartment. (para 8)

Case(s) referred to:
Bohari Taib & Ors v. Pengarah Tanah & Galian Selangor [1991] 1 CLJ 651; [1991] 1 CLJ (Rep) 48 SC ***(refd)***

Legislation referred to:
Companies Act 1965, s. 233
Rules of the High Court 1980, O. 89 r. 1

For the plaintiff - Mohd Harris Abdullah; M/s Mohd Harris Abdullah
For the defendants - Cik Sugania; M/s KS Satkuna & Co

Reported by Rose Aziz

JUDGMENT

Hishamudin Yunus J:

[1] This originating summons is an application by the plaintiff to evict the defendants from the premises of the management office of an apartment known as Sri Bangsar Apartment, pursuant to the summary process as provided for under O. 89 of the Rules of the High Court, 1980.

[2] Rule 1 of O. 89 provides:

> **1. Proceedings to be brought by originating summons (O. 89 r. 1)**
>
> Where a person claims possession of land which he alleges is occupied solely by a person or persons (no being a tenant or tenant holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order.

[3] I have dismissed the application with costs.

[4] First, I shall touch briefly on the facts of the case. The plaintiff is the owner of the management office of an apartment in Bangsar, Kuala Lumpur, known as Sri Bangsar Apartment ('the apartment'). In fact the whole apartment is in the name of the plaintiff as no strata titles have yet been issued to the owners/purchasers of the units. The defendants are the beneficial unit owners as well as the residents of the apartment. The defendants are also the committee members of the association established by the owners/residents of the apartment known as Sri Bangsar Apartment Owners'/Residents' Association. Prior to 21 May 1997, the plaintiff had been managing the apartment. However, on 21 May 1997 the plaintiff company was wound up pursuant to an order of the Kuala Lumpur High Court, Commercial Division, in case No. D4-28-324-1996. Under the winding-up order, the official receiver was appointed the provisional liquidator. After the winding-up order, there was no proper management of the apartment although the management of the apartment, by virtue of s. 233 of the Companies Act 1965 came under the control and custody of the official receiver/ provisional liquidator. As a consequent, the defendants, out of necessity, took over the management of the apartment and occupied the management office. The official receiver – and this is significant – did not protest or object to this move by the defendants.

[5] However, on 10 May 2002 the plaintiff obtained a stay order in respect of the winding-up from the winding-up court. Having obtained the said stay order, the plaintiff requested the defendants to hand over the management (including the management office) of the apartment to the plaintiff. The defendants refused to do so. Hence, the plaintiff commenced the present O. 89 proceeding against the defendants.

[6] I shall now explain my grounds.

[7] The defendants are not squatters simpliciter. Thus the O. 89 procedure cannot be invoked against them. The plaintiff should have proceeded by way of a writ action. In *Bohari bin Taib & Ors v. Pengarah Tanah & Galian Selangor* [1991] 1 CLJ 651; [1991] 1 CLJ (Rep) 48 SC the Supreme Court held:

> In our opinion, for the purpose of the summary procedure, a distinction should be made between squatters simpliciter who have no rights whatsoever, and occupiers with licence or consent, and as well as tenants and licensees holding over. It may be impossible to establish the existence of any triable issue in the case of bare squatters, but the position of tenants and licensees holding over, or persons occupying with implied or express consent of the owner may be different.

[8] In my judgment, in the present case the defendants are licensees holding over. They are licensees holding over because during the period when the official receiver/provisional liquidator had custody and control over the apartment, the defendants had the implied licence to manage the apartment including occupying the management office of the Apartment. This situation came about in the following way. After the plaintiff company had been wound-up by the High Court on 21 February 1997, there was no proper management of the apartment. There was as 'management vacuum'. As such the defendants as the owners/residents and committee members of the Sri Bangsar Apartment Owners/Residents Association, out of necessity, as the day to day management of the apartment had to be undertaken by someone, took over the management of the apartment, including occupying the management office of the apartment for the purpose. This move must be viewed in the following context. There were many serious problems faced by the owners/residents in relation to the apartment: the problem of garbage disposal; sanitation and health problems; the problem of lifts not working; security problem; the problem of unpaid utility bills, the problem of collecting management fees, etc. These problems needed to be attended to and solved. Now, it has to be borne in mind that, after the plaintiff company had been wound-up, the apartment, as has I have pointed out earlier, came under the custody and control of the official receiver as the provisional liquidator by virtue of s. 233 of the Companies Act. Yet the official receiver cum provisional liquidator, practically, did not take effective measures to take over the responsibility of the day to day management of the apartment; and nor did it appoint a property manager/management committee despite repeated requests by the owners/residents to do so. The owners/residents were left in the lurch. Hence, out of desperation, the defendants, with the approval and on behalf of the owners/residents of the apartment, took over the management. Significantly (also as has been mentioned earlier in this judgment), the official receiver/provisional liquidator, did not protest when the defendants out of necessity took over the management of the apartment, including taking over the management office located on the ground floor. Ever since the taking over of the management by the defendants, several positive measures had been taken towards arresting the problems mentioned earlier. The positive measures are set out in para 13 of the defendants' affidavit at encl. 10. These facts appear not to be disputed. Hence, in my view, there was an implied licence given by the official receiver to the defendants to carry out the management of the apartment including occupying the management office. As at the material time (the time of taking over of the management office by the defendants) the plaintiff was in liquidation, and that the official receiver/

provisional liquidator, by operation of law, was then having custody and control of the apartment, thus the official receiver/provisional liquidator, for the purpose of r. 1 of O. 89 is the 'predecessor in title of the plaintiff' who had given implied consent to the defendants to take over the management and to occupy the management office.